

REMARKS

This responds to the Office Action mailed on September 25, 2007.

No amendments, cancellations, or additions are made to the claims. As a result, claims 47-60 are now pending in this application.

For the convenience of the Examiner, Applicants' remarks concerning the claims will be presented in the same order in which the Examiner presented them in the Office Action.

Rejection of Claims 47-49 and 53-60 under 35 U.S.C. §102(e) As Anticipated by Van Hoff

Claims 47-49 and 53-60 were rejected under 35 U.S.C. §102(e) for anticipation by Van Hoff et al. (U.S. 6,272,536). Applicants do not admit that Van Hoff is prior art and reserve the right to swear behind Van Hoff as provided for under 37 C.F.R. §1.131.

The rule under 35 U.S.C. §102 is well settled that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2D 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP §2131.

Van Hoff does not appear to disclose all of the structural elements recited in independent claims 47, 55, and 58.

Regarding claim 47, Van Hoff does not appear to disclose *inter alia* creating, by a channel server, a channel to distribute software comprising a hierarchical list of one or more channel clients and one or more tasks assigned to each one of the channel clients [emphasis added]. The passage in Van Hoff (col. 3, lines 1-13, 45-55; col. 4, lines 19-56) referred to by the Examiner does not appear to describe a channel having the same structure or function as the channel referred to in Applicants' claims.

The term "channel" as used in Applicants' independent claims 47, 55, and 58 has a different structure and function than the term "channel" as used in Van Hoff. In Van Hoff, a "channel" refers to a "named application consisting of code and data which can be subscribed to by an end-user. Once delivered to the end-user a channel behaves much like a normal

application.”¹ As best understood, in Van Hoff, the “channel” itself is an application which can be downloaded from a server system and stored on a client system.²

However, as described in Applicants’ specification, the term “channel” refers to “a mechanism for distributing software to one or more targets from a central location. A channel is a hierarchical list of targets and tasks.”³ Thus, in Applicants’ claim 47, the “channel” does not itself function as code and data which can be subscribed to⁴ (as in Van Hoff), but rather functions as *a mechanism for distributing software* to one or more targets from a central location. Applicants were unable to find any use of “channel” in Van Hoff that is similar to the use of “channel” in Applicants’ claims. Applicants respectfully request that the Examiner point out specifically where such use of the term “channel” occurs in Van Hoff.

Still referring to claim 47, Van Hoff also fails to disclose, for example, receiving, by each one of the channel clients from the channel server, installation files for the channel client component [emphasis added]. The passage in Van Hoff (abstract) referred to by the Examiner does not appear to describe *receiving installation files* for any type of client component. As best understood, in Van Hoff, the installation of the client component (the “tuner”⁵) is not described. Applicants respectfully request that the Examiner point out specifically where in Van Hoff this installation step may be found.

Regarding independent claims 55 and 58, Van Hoff does not appear to disclose, for example, computer executable instructions executed by the central processing unit from the memory to create a channel to distribute software comprising a list of tasks and deployment instructions for the tasks and to provide a first file to install a channel client component on the target computer and to provide a second file to install a service on the target computer... [emphasis added].

As discussed above, in Van Hoff, the “channel” is not created to *distribute* software. In Van Hoff, the “channel” is a software application. In Applicants’ claims, the channel does not function as a software application, but as *a mechanism for distributing software*.

¹ See Van Hoff at column 3 lines 1 - 4.

² See Van Hoff at column 4, lines 39-45.

³ See Applicant's Specification at page 4 lines 9 - 11.

⁴ See Van Hoff at column 3, lines 1-2.

⁵ See Van Hoff at column 3, lines 5-8.

Still referring to claims 55 and 58, Van Hoff also fails to disclose, for example, a first file to install a channel client component on the target computer [emphasis added]. As best understood, Van Hoff fails to describe computer executable instructions to install *any* type of channel client component. As discussed above, in Van Hoff, the client component (the “tuner”) appears to be already installed on the client computer before the channel application can be subscribed to⁶.

For the above reasons, independent claims 47, 55, and 58 should be found to be allowable over Van Hoff, and Applicants respectfully request that the rejection of claims 47, 55, and 58 under 35 U.S.C. §102(b) as anticipated by Van Hoff be withdrawn.

Claims 48-54, which depend from claim 47 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

Claims 56-57, which depend from claim 55 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

Claim 59-60, which depends from claim 58 and incorporates all of the limitations therein, is also asserted to be allowable for the reasons presented above.

Rejection of Claims 50-52 under 35 U.S.C. §103(a)
As Unpatentable over Van Hoff

Claims 50-52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Van Hoff et al.

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the prior art reference (or references when combined) must teach or suggest every limitation of the claim. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA, 1974). MPEP §2143.

As asserted in Applicants’ response to the §102 rejection above, Van Hoff fails to disclose all of the elements recited in independent claim 47.

If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. MPEP §2143.03.

Claims 50-52, which depend from independent claim 47, and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

⁶ See Van Hoff at column 3, lines 1-8; and column 4, line 57 through column 5, line 9.

Additional Elements and Limitations

Applicants consider additional elements and limitations of the claims to further distinguish over the cited references, and Applicants reserve the right to present arguments to this effect at a later date.

Conclusion

Applicants respectfully submit that claims 47-60 are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at (612) 349-9592 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date 2/25/2008

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 25th day of February 2008.

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Signature